

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

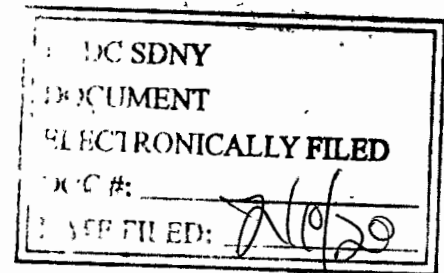
-----X
JOEL AUSTIN,

Petitioner.

-v-

UNITED STATES OF AMERICA,

Respondent.
-----X



16-cv-4446 &
06-cr-991 (JSR)

MEMORANDUM ORDER

JED S. RAKOFF, U.S.D.J.

Before the Court is the Government's motion to remand Joel Austin. The Government's ground for remand is that the January 9, 2020 order of the Court of Appeals vacating and remanding this Court's grant of Mr. Austin's habeas petition automatically reimposes Mr. Austin's original fifteen-year sentence. See Dkt. 48. Defense counsel responds that remand is not required, both because the Court of Appeals did not include language in its order explicitly reinstating Mr. Austin's original sentence, and because federal courts have "inherent authority" to grant bail to habeas petitioners. Mapp v. Reno, 241 F.3d 221, 231 (2d Cir. 2001).

The Court is unpersuaded by defense counsel's first argument, as the vacatur of a resentencing should, in the ordinary course, operate to reinstate the original sentence. See United States v. Maldonado, 996 F.2d 598, 599 (2d Cir. 1993).

The Court is, however, persuaded by defense counsel's second argument that a hearing is necessary to determine whether Mr. Austin's situation is among those "unusual cases" where "extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective." Ostrer v. United States, 584 F.2d 594, 596 n.1 (2d Cir. 1978) (citations omitted). The parties are accordingly directed to appear at a bail hearing on Friday, February 14, 2020 at 11 AM.

SO ORDERED.

Dated:

New York, NY

February 8, 2020

A handwritten signature in black ink, appearing to read 'Jed S. Rakoff', written over a horizontal line.

JED S. RAKOFF, U.S.D.J.